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ACCEPTANCE.

Where a party authorized another to draw different drafts on him upon different consignments to be made, and this other made different consignments and drew different drafts, the party authorizing the drafts accepts them in advance, and is bound to set aside and hold enough money from the proceeds of the consignments to pay them, come in for payment when they may. If he settle an account and pay over his balance without doing so, it is at his own risk. *Miltenberger* v. *Cooke*, 421.

ACTION. See *District of Columbia*, 2, 3; *Ex turpi causâ non oritur actio; Official Negligence.*

ACTUAL SETTLER. See *Oregon Donation Act.*

Unless forbidden by positive law, contracts made by actual settlers on the public lands concerning their possessory rights, and concerning the title to be acquired in future from the United States, are valid as between the parties to the contract, though there be at the time no act of Congress by which the title may be acquired, and though the government is under no obligation to either of the parties in regard to the title. *Lamb* v. *Davenport*, 307.

ADMIRALTY. See *Collision; Demurrage.*

1. Rule of, that damages in collision cases are to be divided, is applicable only to cases where both vessels are injured. *The Sapphire*, 51.
2. Costs in, are wholly under the control of the court giving them. *Ib.*
3. When a vessel libelled for collision means to set up injury to herself and to set off damages therefor against damages claimed for injury which she has herself done, the injury done to her ought to be alleged, either by cross libel or by answer. If not somewhere thus set up below, such damages cannot, and for the first time, be set up in the Supreme Court. *Ib.*
4. An entry on the record of an admiralty case, that on the return of a process of attachment Mr. B. "appears for the respondent, and has a week to perfect an appearance and to answer," is an appearance; the entry being followed by the execution by the respondent or his agents of different bonds, reciting "that an appearance in the case had been entered." *Atkins* v. *The Disintegrating Company*, 272.
5. A District Court of the United States, when acting as a court of admiralty, can obtain jurisdiction to proceed *in personam* against an in-

ADMIRALTY (*continued*).
habitant of the United States not residing within the district (within which terms a corporation incorporated by a State not within the district is meant to be included), by attachment of the goods or property of such inhabitant found within the district. *Atkins* v. *The Disintegrating Company*, 272.

AGENCY. See *Ratification*.

ALABAMA.
1. Prior to the act of March 3d, 1873, the District Court of the United States for the Middle District of Alabama was possessed of circuit court powers, and among these was the right to hear and decide cases properly removable from the State courts within the limits of that district. *Ex parte State Insurance Company*, 417.
2. An order of a State court within those limits ordering the removal of a case into the Circuit Court for the *Southern* District of Alabama was, therefore, void, and that court was right in refusing to proceed in such case when the papers were filed in it. *Ib.*

APPEARANCE.
An entry on the record of an admiralty case, that on the return of a process of attachment Mr. B. "appears for the respondent, and has a week to perfect an appearance and to answer," is an appearance, the entry being followed by the execution by the respondent or his agents of different bonds, reciting "that an appearance in the case had been entered." *Atkins* v. *The Disintegrating Company*, 272.

ARKANSAS. See *Statute of Limitations*, 1.

ASSIGNMENT.
Of a debt carries with it in equity an assignment of a judgment or mortgage by which it is secured. *Batesville Institute* v. *Kauffman*, 151.

ASSIGNMENT OF ERROR. See *Practice*, 3, 5.

ATTORNEY. See *California*, 7; *Notice*.

AUTREFOIS ACQUIT. See *Judgment*.

AUTREFOIS CONVICT. See *Judgment*.

BANK CHECK.
1. Where money is paid on a "raised" check by mistake, neither party being in fault, the general rule is that it may be recovered back as paid without consideration. *Espy* v. *Bank of Cincinnati*, 604.
2. Where a party to whom such a check is offered sends it to the bank on which it is drawn, for information, the law presumes that the bank has knowledge of the drawer's signature and of the state of his account, and it is responsible for what may be replied on these points. *Ib.*
3. Unless there is something in the terms in which information is asked that points the attention of the bank officer beyond these two matters, his verbal response that the check is "good" or "all right," will be limited to them, and will not extend to the genuineness of the filling-in of the check as to payee or amount. *Ib.*

BANK STOCK.

Is not, in National banks organized under the National Banking Act of 1864, subject to lien for discount by the bank to the owner. *Bullard* v. *Bank*, 589.

BANKRUPT ACT. See *Wife's Separate Property.*

1. Nothing short of a clear, distinct, and unequivocal promise will revive a debt once barred by the. *Allen & Co.* v. *Ferguson*, 1.
2. A payment by one insolvent, which would otherwise be void as a preference under sections thirty-five and thirty-nine of the Bankrupt law, is not excepted out of the provisions of those sections because it was made to a holder of his note overdue, on which there was a solvent indorser whose liability was already fixed. *Bartholow* v. *Bean*, 635.
3. An exchange of values may be made at any time, though one of the parties to the transaction be insolvent. There is nothing in the Bankrupt Act which prevents one insolvent from dealing with his property at any time before proceedings in bankruptcy are taken by or against him, provided such dealing be conducted without any purpose to defraud or delay his creditors or to give preference to any one, and do not impair the value of his estate. *Cook* v. *Tullis*, 332; *Tiffany* v. *Boatman's Institution*, 376.
4. Where a bankrupt owes a debt to two persons jointly, and holds a joint note given by one of them and a third person, the two claims are not subject to set-off under the Bankrupt Act, being neither mutual debts nor (without more) mutual credits. *Gray* v. *Rollo*, 629.

BAY OF SAN FRANCISCO. See *California*, 1, 2; *San Francisco, City of.*

BOOK ENTRIES. See *Evidence*, 6, 7.

BUILDER'S LIEN. See *Montana.*

Held not to have attached where a builder took a real security for payment of the work which he was to do, and afterwards the work being all done, gave it up and took a mere note. *Grant* v. *Strong*, 623.

BURDEN OF PROOF. See *Legal Presumptions.*

It is error to instruct a jury, in an action for penalties for alleged frauds upon the revenue, that after the government has made out a *primâ facie* case against the defendants, if the jury believe the defendants have it in their power to explain the matters appearing against them, and do not do so, all doubt arising upon such *primâ facie* case must be resolved against them. The burden rests upon the government to make out its case beyond a reasonable doubt. *Chaffee & Co.* v. *United States*, 516.

CALIFORNIA. See *San Francisco, City of.*

1. The subject of the rights of the city of San Francisco and her grantees in and to lands in front of the city, covered with tide-waters of the bay and within certain designated lines, considered in reference to the rights of the State to the lands on her admission into the Union, and the acts of her legislature passed March 26th and May 1st, 1851, giving to the city certain rights in the said lands. *Weber* v. *Harbor Commissioners*, 58.

CALIFORNIA (*continued*).

2. Her statute of limitations protecting persons from suits for injury to real property, interpreted in connection with the act of the State creating a board of harbor commissioners. *Weber* v. *Harbor Commissioners*, 58.

3. In ejectment, where both parties claim under patents of the United States issued upon a confirmation of grants of land in, made by the former Mexican government, both of which patents cover the premises, the inquiry of the court must extend to the character of the original grants, and the controversy can only be settled by determining which of these two gave the better right. *Henshaw et al.* v. *Bissell*, 255.

4. In determining such controversy a grant identified by specific boundaries, or having such descriptive features as to render its identification a matter of absolute certainty, gives a better right to the premises than a floating grant, although such floating grant be first surveyed and patented. *Ib.*

5. A survey under a grant approved by the District Court of the United States under the act of June 14th, 1860, is conclusive as against adverse claimants under floating grants. *Ib.*

6. Whilst proceedings are pending before the tribunals of the United States for the confirmation of claims to land under grants of the former Mexican government, the statute of limitations of California does not run against the right of the claimants to the land subsequently confirmed to them. It only begins to run against the title perfected under the legislation of Congress from the date of its consummation. *Ib.*

7. The title of an attorney purchasing property at a judicial sale decreed in proceedings in which he acted as an attorney, falls by the law of California, with the reversal of the decree directing the sale, independent of defects in the proceedings; and conveyances after such reversal pass no title as against a grantee of the original owner of the property. *Galpin* v. *Page*, 350.

CERTIFICATE OF DIVISION.

Questions sent here for answer will not be answered when, on a view of the record, it appears that from some fatal defect in the proceedings, no judgment can be entered against the defendant in the court whence the certificate comes. *United States* v. *Buzzo*, 125.

CERTIORARI.

Where a prisoner shows that he is held under a judgment of a Federal court made without authority of law, the Supreme Court will, by writs of *habeas corpus* and *certiorari*, look into the record so far as to ascertain whether the fact alleged be true, and if it is found to be so will discharge the prisoner. *Ex parte Lange*, 163.

CHANCERY. See *Equity*.

CHECK. See *Bank Check*.

CHICKASAW INDIANS.

1. The treaty of May 24th, 1834, with the Chickasaw Indians conferred

CHICKASAW INDIANS (*continued*).
title to the reservations contemplated by it, which was complete when the locations were made to identify them. *Best* v. *Polk*, 112.
2. Reservees under that treaty are not obliged, in addition to proving that the locations were made by the proper officers, to prove also that the conditions on which these officers were authorized to act had been observed by them. *Ib.*

COLLECTOR. *See Customs of the United States.*

COLLISION. See *Admiralty*, 1, 3; *Demurrage.*
An ocean steamer, running at the rate of eight or ten miles an hour, and close in with the Brooklyn shore, on the East River, and across the mouths of the ferry slips there, in order to get the benefit of the eddy, condemned for a collision with a New York ferry-boat coming out of her dock on the Brooklyn side, and which, owing to vessels in the harbor, did not see the ocean steamer. *The Favorita*, 598.

COMMISSARY OF SUBSISTENCE.
His office in the army distinguished from that of a quartermaster. *Shrewsbury* v. *United States*, 664.

CONDONATION OF OFFENCE. See *Official Negligence.*

CONFISCATION ACT.
1. Under the act of July 17th, 1862, known as the "Confiscation Act," and the Joint Resolution, of the same date, explanatory of it, only the life estate of the person for whose offence the land has been seized, is subject to condemnation and sale. The fact that the decree may have condemned the fee does not alter the case. *Day* v. *Micou*, 156.
2. When such person has, previously to his offence, mortgaged the land to *a bonâ fide* mortgagee, the mortgage is not divested. *Ib.*

CONSIDERATION OF CONTRACT. See *Dower.*

CONSTITUTIONAL LAW. See *Confiscation Act; Judicial Sentence; Jurisdiction*, 1–3; *Rebellion*, 5; *Slave Contracts*, 3; *Taxation*, 6.
1. Agencies of the Federal government, how far exempt from taxation by State governments. The question considered in the case of a State taxing a railroad corporation chartered by Congress. *Railroad Company* v. *Peniston*, 5.
2. The ordinary legislation of the States regulating or prohibiting the sale of intoxicating liquors raises no question under the Constitution of the United States prior to the fourteenth amendment of that instrument. *Bartemeyer* v. *Iowa*, 129.
3. The right to sell intoxicating liquors is not one of the privileges and immunities of citizens of the United States which by that amendment the States were forbidden to abridge. *Ib.*
4. The provisions of the common law and of the Federal Constitution, that no man shall be twice placed in jeopardy of life or limb, are mainly designed to prevent a second punishment for the same crime or misdemeanor. *Ex parte Lange*, 168.

CONSTRUCTION, RULES OF. See "*From.*"

I. As applied to contracts, etc.

II. As applied to statutes.

1. Where a thing is against the spirit and policy of a statute, a permission in favor of it cannot be implied from general expressions. *Bullard* v. *Bank*, 589.

III. As applied to wills.

2. The construction of a will on the question of estate in fee, or life estate with vested remainder, left undecided, with comments on the small value that rules of decision and decided cases have as guides. *Clarke* v. *Boorman's Executors*, 493.

CONTRACT. See *Dower; Slave Contract.*

CORPORATE STOCK. See *Corporation.*

CORPORATION.

Where the charter of a corporation fixes the amount of its capital stock, but says that it may be increased "at the pleasure of *the said corporation*," the directors alone, and without the matter being submitted to and approved by the stockholders, have no power to increase it. The fact that the charter declares that "*all the corporate powers* of the said corporation shall be vested in and exercised by a board of directors" does not alter the case. *Railway Company* v. *Allerton*, 233.

COSTS.

In admiralty are wholly under the control of the court giving them. *The Sapphire*, 51.

CREDITOR AND DEBTOR. See *Bankrupt Act; Trust Property; Wife's Separate Property.*

CUSTOMS OF THE UNITED STATES.

1. Under the act of June 30th, 1864, "to increase duties on imports," &c., the collector is under no obligation to give notice to the importer of his liquidation of duties on merchandise imported. The importer who makes the entries is under obligation himself, if he wishes to appeal from it, to take notice of the collector's settlement of them. *Westray* v. *United States*, 322.
2. The right of the importer to complain or appeal begins with the date of the liquidation, whenever that is made. *Ib.*

DEBT. See *Discharged Debt.*

The action of, lies for a statutory penalty. *Chaffee & Co.* v. *United States*, 516.

DEBTOR AND CREDITOR. See *Bankrupt Act; Trust Property; Wife's Separate Property.*

DECEDENT'S ESTATE. See *District of Columbia*, 2, 3.

DECREE PRO CONFESSO.

On such decree for want of an answer, the only question for the consideration of this court on appeal is, whether the allegations of the bill are sufficient to support the decree. *Masterton* v. *Howard*, 99.

DEFICIENCY IN RETURN. See *Internal Revenue*, 4, 5, 6.

"DELIVER."

A contract made with a quartermaster of the army to "transport" supplies, distinguished from one made with a commissary of subsistence to "deliver" them. *Shrewsbury* v. *United States*, 664.

DEMURRAGE.

Demurrage charged against a vessel which had been condemned for collision with a ferry-boat, for the time that the ferry-boat was repairing, though her owners, a ferry company, had a spare boat which took the place on the ferry of the injured boat. *The Favorita*, 598.

DIRECT TAX. See *Tender*.

DIRECTORS OF CORPORATIONS.

Have no power to increase the capital stock of a corporation when the charter authorizes it to be increased "at the pleasure of the *corporation*." *Railway Company* v. *Allerton*, 233.

DISCHARGED DEBT.

Nothing short of a clear, distinct, and unequivocal promise will revive a debt discharged by the Bankrupt Act. *Allen & Co.* v. *Ferguson*, 1.

DISTRICT OF COLUMBIA. See *Dower*.

1. Where a husband and another, owning a piece of land in the District of Columbia, which they wanted to sell, applied to the wife (all parties being residents of the District) to release her dower, which she did in consideration of the husband and the other executing to her directly a joint promissory note for a sum of money; *Held*, That in virtue of the act of 10th April, 1869 (14 Stat. at Large, 45), regulating the rights of property of married women in the District, and in virtue of the further act, to amend the law of the District of Columbia in relation to judicial proceedings therein, of February 22d, 1867 (14 Id. 405), she could sue at law the joint obligor of her husband. *Sykes* v. *Chadwick*, 141.

2. Where a trustee appointed to make sale of a decedent's real estate has given bonds with surety in a penal sum to the State conditioned for the performance of his duties, children, entitled equally to a share in any surplus remaining after debts, expenses, &c., are paid from the proceeds of the sale, may, according to the practice in the District of Columbia, after the exact amount of such share has been found by an auditor whose report is confirmed by the court, bring joint suit against the surety—the trustee being dead—in the name of the State, on the bond for the penal sum; and a judgment for that sum to be discharged on the payment of the shares or sums certain, found as abovesaid, is regular. *Brent* v. *Maryland*, 430.

3. Such joint suit, though against the surety of the trustee (the trustee in his lifetime having had notice of everything), may, according to the practice in the said District, be at law. *Ib.*

DONATION ACT. See *Oregon Donation Act*.

DOWER. See *District of Columbia*, 1.

The release of a woman's right of, is a good consideration for the payment of money, or promise of payment of it to her separate use; and even where the woman probably or certainly has, in reality, under the statutes of the place where she lives, as judicially expounded, no right of dower, still if a deed of relinquishment by her be thought so necessary by a purchaser of property from the husband, that the purchaser will not take the title without such relinquishment, her execution of the deed is a good consideration for such payment, or promise to pay. *Sykes* v. *Chadwick*, 141.

DUTIES. See *Customs of the United States.*

EQUITY. See *Bankrupt Act*, 4; *Decree Pro Confesso*; *District of Columbia*, 3; *Estoppel*; *Laches*; *New York*; *Parties*; *Practice*, 7, 12; *Set-off*; *Statute of Limitations*, 2; *Usury.*

1. An assignment of a debt carries with it, in equity, an assignment of a judgment or mortgage by which it is secured. *Batesville Institute* v. *Kauffman*, 151.
2. Where a trustee is dead the trust being still alive and unexecuted, a court of equity will carry it out through any other appropriate person in whom the control of the property may be; or if necessary, through its own officers and agents without the intervention of any trustee. *Ib.*

ESTOPPEL. See *Landlord and Tenant.*

For the application of the doctrine of equitable estoppel, such as will prevent a party from asserting his legal rights to property, there must be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud. *Henshaw* v. *Bissell*, 255.

EVIDENCE. See *Burden of Proof*; *Insurance*, 2; *Legal Presumptions*; *Practice*, 8, 9, 10.

1. The testimony of a wife and daughter, undertaking to swear from mere memory after a lapse of five or six years, as to which of one or two particular years (as *ex. gr.*, whether 1865 or 1866) they saw a particular paper in, discredited; there being circumstances leading to the inference that they were mistaken as to the year; and the purpose of the suit which their testimony was brought to sustain being to disturb, in favor of the husband and father, after a lapse of nearly five years, and after the death of one of the opposite parties to it, a settlement apparently fair. *Willett* v. *Fister*, 91.
2. The act of Congress of July 2d, 1864, which says that there shall be no exclusion of any witness in civil actions because he is a party to or interested in the issue tried does not give capacity to a wife to testify in favor of her husband. *Lucas* v. *Brooks*, 486.
3. Where, on a suit to recover a balance of a draft claimed because consignments of cattle against which the draft was drawn, have not proved adequate to protect it, the question is whether the draft was drawn under a letter of instructions and in behalf of the doings of

EVIDENCE (*continued*).

another person, one T., *an agent of the drawees*, or whether it was drawn by the drawer in behalf of transactions *on his own account*, a letter from the drawer in which he says, "I ship you twelve cars of cattle. *I may buy some more before Mr. T. gets back. Do the best you can*," is admissible evidence against him to show that it was on his own account. *Mulhall* v. *Keenan*, 342.

4. When a letter of instructions told the person to whom it was written to draw "when there is a sufficient margin," evidence as to the fact whether there was sufficient margin or not is clearly admissible, on a suit against the drawee of the bill, as an acceptor in advance, unless there be something special to render it not so. *Ib.*

5. The fact that a bill of particulars filed with the declaration is made up of the debit of the draft sued on, sundry credits and the balance claimed, does not tend so clearly to show that the only question which the plaintiff meant to raise was whether the transaction was one on account of T., or an individual one, as that he may not, admitting that the transaction was on account of T., give evidence to show that the recipient of the letter had not obeyed his instructions to draw only when there was a sufficient margin. *Ib.*

6. Entries in the defendant's own books, whose purport was to show that the transaction was on account of T., are not admissible. *Ib.*

7. The general rule which governs the admissibility of entries in books made by private parties in the ordinary course of their business, requires that the entries shall be contemporaneous with the facts to which they relate, and shall be made by parties having personal knowledge of the facts, and be corroborated by their testimony, if living and accessible, or by proof of their handwriting if dead, or insane, or beyond the reach of the process or commission of the court. *Chaffee & Co.* v. *United States*, 516.

8. Copies of records appertaining to the land office, certified by the register of the district where the lands are, are evidence in Mississippi. *Best* v. *Polk*, 112.

EX TURPI CAUSA NON ORITUR ACTIO.

1. When a collector of internal revenue in a rural district of Mississippi—where, owing to the lawless condition in which the rebellion, then recently suppressed, had left the region, it was not safe to have gold and silver coin in one's house—in violation of the provisions of the Independent Treasury Act, but with an apparently good motive—openly and without indirection, and because he thought it safer thus to act than to take gold and silver coin—took in payment of taxes on cotton, accepted drafts drawn by the shippers of it on consignees of it in New Orleans (which was the place of deposit for taxes collected in Mississippi), afterwards (the drafts not being paid, and he having in his accounts with the government charged himself and been charged by it with the tax as if paid in gold and silver coin), sued the acceptors, the fact that in taking the drafts instead of gold and silver coin, he had acted in violation of the statutes of the United States,

EX TURPI CAUSA NON ORITUR ACTIO (*continued*).
does not necessarily so taint his act with illegality as that he cannot recover on them. *Miltenberger* v. *Cooke*, 421.
2. As between the parties the collector's charging himself with the tax and reporting it to the government as paid, would be payment by the collector of the tax. *Ib.*

"FINAL DECREE." See *Final Judgment.*

"FINAL JUDGMENT."
No judgment or decree is final which does not terminate the litigation between the parties. A judgment or decree reversing the judgment or decree of an inferior court, and remanding the cause for such other and further proceedings as to law and justice shall appertain, does not do this. A writ of error and an appeal to such a judgment and to such a decree dismissed. *St. Clair County* v. *Lovingston*, 628; *Moore* v. *Robbins*, 588.

FINDING.
1. Effect of a general, under the act of March 3d, 1865, as to matters open for review in the Supreme Court. *Insurance Company* v. *Folsom*, 237.
2. Circuit Courts not required under the said act to make a special. *Ib.*

FRAUDULENT PREFERENCE. See *Bankrupt Act*, 2, 3.

"FROM."
The word excludes the day of date. Hence an officer commissioned to hold office during the term of four years from the 2d March, 1845, was held to be in office *on* the 2d of March, 1849. *Best* v. *Polk*, 112.

GEORGIA. See *Wife's Separate Property.*

HABEAS CORPUS.
Where a prisoner shows that he is held under a judgment of a Federal court, made without authority of law, the Supreme Court will, by writs of *habeas corpus* and *certiorari*, look into the record, so far as to ascertain whether the fact alleged be true, and if it is found to be so, will discharge the prisoner. *Ex parte Lange*, 163.

HUSBAND AND WIFE. See *District of Columbia*, 1; *Dower; Oregon Donation Act*, 2; *Wife's Separate Property.*
1 The act of Congress of July 2d, 1864, which says that there shall be no exclusion of any witness in civil actions because he is a party to or interested in the issue tried, does not give capacity to a wife to testify in favor of her husband. *Lucas* v. *Brooks*, 436; and see *Willett* v. *Fister*, 91.
2 Where one writes to a man's wife (there being a relationship by blood between the party writing and the wife) proposing to her to occupy a farm on which she and her husband were then living, and to pay a certain rent therefor, which offer she accepts, and there is nothing in the correspondence beyond the fact that the property is offered to the wife and that the wife accepts it, to infer a purpose to give it to her to the exclusion of her husband, the husband is not excluded. The

HUSBAND AND WIFE (*continued*).
lease enures to his benefit and brings him into the relation of a tenant to the lessors. *Lucas* v. *Brooks*, 436.

IMPLIED REPEAL OF STATUTES.
A proviso to an existing act, *held* to have been repealed by an act which "*amended*" the former act, "by striking out all after the enacting clause and inserting in lieu thereof, the following;" this "following" being in part an iteration of the words of the section amended, and in part new enactments. *Steamboat Company* v. *The Collector*, 478.

IMPORTER. See *Customs of the United States.*

INCREASE OF CORPORATE STOCK. See *Corporation.*

INFORMATION, CRIMINAL. See *Internal Revenue*, 1.

INSURANCE.
1. The use of the phrase "lost or not lost," is not necessary to make a marine policy retrospective. It is sufficient if it appear by the description of the risk and the subject-matter of the contract that the policy was intended to cover a previous loss if one, unknown, existed. *Insurance Company* v. *Folsom*, 237.
2. Where a policy, following the exact language of the application, insured on the 1st of March, 1869, a vessel then at sea, "at and from the 1st day of January, 1869, at noon, until the 1st day of January, 1870, at noon," nothing being said in either policy or application as to "lost or not lost," nor about who was the master of the vessel, nor as to what voyage she was on: *held*, on a suit on the policy—and the company not having shown that the name of the master or the precise destination were material facts—that the application had no tendency to show that the assured when he made the application did not communicate to the defendants all the material facts and circumstances within his knowledge, and answer truly all questions put to him in regard to those several matters. *Ib.*

INTENT. See *Internal Revenue*, 1; *Waiver of Notice.*

INTEREST. See *National Banks*, 3; *Usury.*

INTERNAL REVENUE. See *Implied Repeal of Statutes.*
1. On an information under the ninth section of the Internal Revenue Act of July 13th, 1866, which enacts that any person who shall issue any instrument, &c., for the payment of money, without the same being duly stamped, "with intent to evade the provisions of this act, shall forfeit and pay," &c., an intent to evade is of the essence of the offence, and no judgment can be entered on a special verdict which, finding other things, does not find such intent. *United States* v. *Buzzo*, 125.
2. Under the ninth section of the act of July 13th, 1866, laying on the owners of steamboats a tax of "2½ per cent. of the *gross receipts from passengers*," the owners of a night-boat which receives a certain sum for the mere passage of persons (that is to say, for their barely being on the boat during its transit), and also a certain sum for the use of

INTERNAL REVENUE (*continued*).

berths and state-rooms (which berths and state-rooms it was not obligatory on the passengers to take, or pay for), is chargeable with 2½ per centum on the latter sort of receipts as well as on the former. *Steamboat Company* v. *The Collector*, 478.

3. The proviso in the fourth section of the act of March 3d, 1865, exempting a certain class of steamboats from a tax of 2½ per cent., which was laid on all steamboats by the one hundred and third section of the act of June 30th, 1864, fell by the enactment of the ninth section of the act of July 13th, 1866. *Ib.*

4. Under the twentieth section of the Internal Revenue Act of June 30th, 1864, as amended by the ninth section of the act of July 13th, 1866, it is not necessary that an assessor, in making a reassessment for deficiencies, should make his reassessment coincide, month by month, in the terms which it covers, with the monthly returns of the manufacturer; that is to say, it is not requisite that he should make a separate specification of deficiency for each defective return. *Dandelet* v. *Smith*, 642.

5. Nor, under the terms of the act of 1866, when the reassessment was made within fifteen months from the passage of the act, was it necessary that the reassessment should have reference only to returns made within fifteen months prior to the reassessment. *Ib.*

6. Nor, under the act of March 2d, 1867 (conceding that since the act of 1866 brewers are taxable, in the first instance, by stamps per barrel, and not on monthly returns), would a reassessment for deficiency be void, even though it had been made out on the principle of an assessment for false returns, under the previous act of July 13th, 1866. *Ib.*

INTERPRETATION OF LANGUAGE. See *Construction, Rules of.*

The word "from" excludes the day of date. *Best* v. *Polk*, 112.

INTOXICATING LIQUORS. See *Constitutional Law*, 2, 3.

IOWA.

Section 3275 of its code authorizing municipal corporations to levy a tax to pay judgments for its debts, confers no independent power to levy a specific tax to pay a judgment on warrants issued since 1863, for ordinary county expenditures. *Butz* v. *Muscatine* (8 Wallace, 575) distinguished from this case. *Supervisors* v. *United States*, 71.

JOINT ACTION. See *District of Columbia*, 2.

JUDGMENT. See "*Final Judgment.*"

1. When a court has imposed fine *and* imprisonment, where the statute only conferred power to punish by fine *or* imprisonment, and the fine has been paid, the court cannot, even during the same term, modify the judgment by imposing imprisonment instead of the former sentence. *Ex parte Lange*, 163.

2. A second judgment on the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he must be discharged. *Ib.*

JUDICIAL COMITY.

1. Where in suits brought in a State court to settle an alleged copartnership between the plain iffs and a deceased partner, the Supreme Court of the State decided that there had been no sufficient service on an infant defendant who had succeeded to an undivided interest in the property of the deceased partner, and consequently that the lower court had had no authority to appoint a guardian *ad litem* for such infant, and therefore reversed a decree directing a sale of the property of the deceased, such adjudication is the law of the case, and is binding upon the Circuit Court of the United States in an action brought by a grantee of the heirs of the deceased against a purchaser at a sale under such decree. *Galpin* v. *Page*, 350.
2. The thirty-fourth section of the Judiciary Act of 1789, enacting "that the laws of the several States . . . shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply," does not apply to questions of a general nature not based on a local statute or usage, nor on any rule affecting the titles to land, nor on any principle which has become a rule of property. *Boyce* v. *Tabb*, 546.

JUDICIAL PROCEEDINGS. See *Territories.*

JUDICIAL SENTENCE.

1. When a court has imposed fine *and* imprisonment, where the statute only conferred power to punish by fine *or* imprisonment, and the fine has been paid, it cannot, even during the same term, modify the judgment by imposing imprisonment instead of the former sentence. *Ex parte Lange*, 163.
2. A second judgment on the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he must be discharged. *Ib.*

JURISDICTION. See *Alabama; Legal Presumptions.*

1. The jurisdiction of a court by which a judgment offered in evidence was rendered may always be inquired into. *Thompson* v. *Whitman*, 457; and see *Galpin* v. *Page*, 351.
2. The record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist. *Ib.*
3. Want of jurisdiction may be shown either as to the subject-matter or the person, or, in proceedings *in rem*, as to the thing. *Ib.*
4. Where special powers conferred upon a court of general jurisdiction are brought into action in a special manner, not according to the course of the common law, or where the general powers of the court are exercised over a class not within its ordinary jurisdiction upon the performance of prescribed conditions, a presumption of jurisdiction will not attend the judgment of the court The facts essential to the exercise of the special jurisdiction must appear in such cases upon the record. *Galpin* v. *Page*, 351.

JURISDICTION (*continued*).

I. OF THE SUPREME COURT OF THE UNITED STATES.

(*a*) It HAS jurisdiction—

5. Where a prisoner shows that he is held under a judgment of a Federal court made without authority of law, by writs of *habeas corpus* and *certiorari* to look into the record so far as to ascertain that fact, and if it is found to be so to discharge the prisoner. *Ex parte Lange*, 163.

(*b*) It has NOT jurisdiction—

6. As of a "final judgment," or as of a "final decree," of any judgment or of any decree which does not terminate the litigation between the parties. Hence it has not jurisdiction of a judgment or decree reversing the judgment or decree of an inferior court, and remanding the cause for such other and further proceedings as to law and justice shall appertain. A writ of error and an appeal to such a judgment and such an appeal dismissed. *St. Clair County* v. *Lovingston*, 628; *Moore* v. *Robbins*, 588.

II. OF THE CIRCUIT COURTS OF THE UNITED STATES.

7. A case in which the plaintiff is a citizen of the State where the suit is brought and two of the defendants are citizens of other States, a third defendant being a citizen of the same State as the plaintiff, is not removable to the Circuit Court of the United States under the act of March 2d, 1867, upon the petition of the two foreign defendants. *Case of the Sewing Machine Companies*, 553.

III. OF THE DISTRICT COURTS OF THE UNITED STATES.

8. When acting as courts of admiralty they can obtain jurisdiction to proceed *in personam* against an inhabitant of the United States not residing within the district (within which terms a corporation incorporated by a State not within the district is meant to be included), by attachment of the goods or property of such inhabitant found within the district. *Atkins* v. *The Disintegrating Company*, 272.

LACHES. See *New York; Statute of Limitations*, 2.

The general doctrines of courts of equity concerning lapse of time, laches, and stale claims, will protect the executors of a trustee for matters growing out of the trust which occurred forty years before suit brought, which were known to the ancestor under whom the plaintiffs claim for over twenty years before his death, and where the suit is brought by those heirs fourteen years after *his* death, and two years after the death of the trustee, and where no person connected with the transaction complained of remains alive. *Clarke* v. *Boorman's Executors*, 493.

LANDLORD AND TENANT. See *Husband and Wife*, 2; *Waiver of Notice*.

A person in possession of land who takes a lease from another who has bought and claims the land leased, is estopped from denying the title of such other person, or showing that such person was but trustee of the land for him. *Lucas* v. *Brooks*, 436.

LAST WILL AND TESTAMENT.

1. A writing bearing even date with a paper having the form of and purporting to be the last will and testament of the party, and disposing clearly and absolutely of all his estate,—which writing refers to the paper as the party's "will" and speaks of itself as "a letter" written for the information and government of the executors, so far only as they see fit to carry out the testator's present views and wishes,—has no testamentary obligation, even though it direct the persons to whom it is written to allow such and such persons to have specific benefits named in specific items of property. *Lucas* v. *Brooks*, 436.
2. Comments on the worthlessness of rules of decision and of decided cases on the construction of wills, when the question is on the point whether an estate in fee is devised or only a life estate with a vested remainder. *Clarke* v. *Boorman's Executors*, 493.

"LAW IMPAIRING THE OBLIGATION OF CONTRACTS." See *Slave Contracts*, 2, 3.

LEGAL PRESUMPTIONS. See *Burden of Proof; Jurisdiction*, 1–5.

1. Those implied in support of the judgments of superior courts of general jurisdiction, only arise with respect to jurisdictional facts, concerning which the record is silent. *Galpin* v. *Page*, 351.
2. And they are limited to jurisdiction over persons within their territorial limits, and over proceedings which are in accordance with the course of the common law. *Ib.*

LIEN. See *Builder's Lien.*

National banks do not acquire one on stock in the bank owned by their own debtors. *Bullard* v. *Bank*, 589.

LOAN. See *National Banks; Usury.*

"LOST OR NOT LOST." See *Insurance*, 1.

LOUISIANA. See *Slave Contracts.*

MARRIED WOMEN. See *District of Columbia*, 1; *Dower; Husband and Wife; Oregon Donation Act*, 2; *Wife's Separate Property.*

MECHANIC'S LIEN. See *Builder's Lien.*

"MILITARY SERVICE OF THE UNITED STATES."

1. This expression as used in the act of March 3d, 1849, "to provide for payment of horses or other property lost or destroyed" in, does not include the case of a contractor with the government transporting from post to post, remote from any seat of war. *Stuart* v. *United States*, 84.
2. The said act, giving compensation for "damage sustained by the capture or destruction by an *enemy*," a petition by a contractor for transportation of military supplies, to the Court of Claims for compensation, which represented that the party transporting was "attacked by a *band of hostile Indians;*" was *held*, not sufficiently full and specific, the government not being at the time at war with the Indians. *Ib.*

MISSISSIPPI.

Copies of records appertaining to the land office, certified by the register of the district where they are, are evidence in the State of. *Best* v. *Polk*, 112.

MISSOURI.

1. The ordinance of July 4th, 1865, relating to the payment of State and of railroad debts, adopted by the State of, as part of its then new constitution, did not mean to say that the legislature might provide for the sale of the property of the St. Louis and Iron Mountain Railroad Company in any manner which the new constitution forbade. *Trask* v. *Maguire*, 392.
2. That constitution forbade the renewal of an exemption from taxation as much as it did the creation of one in an original form. *Ib.*

MONTANA.

1. Under the mechanic's lien law and Civil Practice Act of Montana, a mechanic who has completed his claim by filing a lien, may assign it to another, who may institute a proceeding on it in his own name. *Davis* v. *Bilsland*, 659.
2. Under the first-mentioned law the liens secured to mechanics and material-men have precedence over all other incumbrances put upon the property after the commencement of the building. *Ib.*

MOOT CASES.

No opinion will be given on cases devised to obtain an opinion from the Supreme Court upon a state of facts not really existing. *Bartemeyer* v. *Iowa*, 129.

MORTGAGE. See *Confiscation Act*, 2.

MUNICIPAL CORPORATIONS. See *Iowa*.

MUTUAL DEBTS AND CREDITS. See *Bankrupt Act*, 4; *Set-off*.

NATIONAL BANKS.

1. Organized under the National Banking Act of June 3d, 1864, cannot, even by provisions framed with a direct view to that effect in their articles of association and by direct by-laws, acquire a lien on their own stock held by persons who are their debtors. *Bullard* v. *Bank*, 589.
2. A by-law giving to a bank a lien on stock of its debtors is not "a regulation of the business of the bank, or a regulation for the conduct of its affairs," within the meaning of the said act, and, therefore, not such a regulation as under the said act National banks have a right to make. *Ib.*
3. Under the thirtieth section of the said act, National banks may take the rate of interest allowed by the State to natural persons generally, and a higher rate, if State banks of issue are authorized by the laws of the State to take it. *Tiffany* v. *National Bank of Missouri*, 409.

NEBRASKA. See *Taxation*, 7, 8.

NEGATIVE PREGNANT. See *Oregon Donation Act*, 1.

NEMO BIS DEBET PUNIRI, ETC.

This maxim applied in the case where a court, by one sentence, imposed fine *and* imprisonment (under a statute authorizing fine *or* imprisonment), and at the same term of the court modified the judgment by imposing imprisonment instead of the former sentence. The second judgment held void. *Ex parte Lange*, 163.

NEW YORK. See *Laches; Statutes of Limitation.*

1. A violation of trust growing out of a mistaken construction of a will by the executors, unaccompanied by fraudulent intent, is within the ten years statute of limitation of the State of New York concerning actions for relief in cases of trust not cognizable by courts of law. *Clarke* v. *Boorman's Executors*, 493.

2. The court expresses itself as inclined to the opinion that such a case is not within the protection of the statute which allows bills for relief, on the ground of fraud, to be filed within six years after the discovery of the fraud. *Ib.*

3. Where the party interested in his lifetime had notice of all the facts which constituted the ground of fraud alleged in the bill, and for eight years that he lived after the cause of action accrued to him, with notice of his rights and of the whole transaction, brought no suit nor set up any claim, his heirs are not entitled to the benefit of this exemption from the bar of the statute on the ground of recent discovery of the fraud. *Ib.*

NOTICE. See *Official Bond; Waiver of Notice.*

Where in a proceeding to sell the real estate of a decedent for the payment of his debts the solicitor who presents the petition for the decree of sale is himself appointed trustee to make the sale, and himself becomes bound in bonds for the performance of the duties belonging to such appointment, and himself makes all the motions and procures all the orders under which the trustee's liability in the matter arises, he may, if he is liable for the non-payment of money which he was ordered by the court to pay, be sued without formal notice to him. He has notice in virtue of his professional and personal relations to the case. *Brent* v. *Maryland*, 430; *Galpin* v. *Page*, 350.

OFFICIAL BOND. See *Official Negligence; Warehouse Bond.*

OFFICIAL NEGLIGENCE.

On a suit by the government against the sureties of a postmaster on his official bond, it is no defence that the government, "through their agent, the Auditor of the Treasury of the Post Office Department, had full notice of the defalcation and embezzlement of funds of the plaintiff before them, and yet neglectfully permitted the said postmaster to remain in office, whereby he was enabled to commit all the default and embezzlement," &c. *Jones et al.* v. *United States*, 662.

OREGON DONATION ACT. See *Actual Settler.*

1. The proviso of the said act of September 27th, 1850, which forbade the *future* sale of the settler's interest until a patent should issue, raises a

OREGON DONATION ACT (*continued*).

strong implication in favor of the validity of a contract for a sale made *before* the passage of the act. *Lamb* v. *Davenport*, 307.

2. Whether the husband or wife who takes as survivor the share of the deceased under the said Donation Act, takes as purchaser or by inheritance, the contracts of the husband concerning the equitable interest of the part allotted to him, made before the act was passed, are binding on the title which comes to his children by reason of a patent issued after the death of both husband and wife. *Ib.*

PARTIES.

1. Where the assignees of a claim on a third party have parted completely with their interest in it and, by a transfer, vested the entire title in others, they are not necessary parties in an equity proceeding by these others to enforce it. *Batesville Institute* v. *Kauffman*, 151.
2. Although a stockholder in a corporation may bring a suit when the corporation refuses, yet, as in such case the suit can be maintained only on the ground that the rights of the corporation are involved, the corporation should be made a party to the suit, and a demurrer will lie if it is not so made. *Davenport* v. *Dows*, 626.
3. Where a railroad corporation, by mortgage, whose sufficiency to secure what it is given to secure is doubtful, mortgages its property directly to all its bondholders by name, to secure specifically to each the amount due on the bonds to *him*, no one bondholder, even when professing to act in behalf of all bondholders who may come in and contribute to the expenses of the suit, can proceed alone against the company, and ask a sale of the property mortgaged. *Railroad Company* v. *Orr*, 471.

PATENTS. See *Oregon Donation Act*, 2.

I. GENERAL PRINCIPLES RELATING TO.

1. When, in a patent case, a person claims as an original inventor and the defence is a prior invention by the defendant, if the defendant prove that the instrument which he alleges was invented by him was complete and capable of working, that it was known to at least five persons, and probably to many others, that it was put in use, tested, and successful, he brings the case within the tests required by law to sustain the defence set up. *Coffin* v. *Ogden*, 120.
2. The mere change in an instrument or machine of one material into another is not the subject of a patent; the purpose and means of accomplishment, and form and mode of operation of each instrument—the new as of the old—being each and all the same. *Hicks* v. *Kelsey*, 670.

II. THE VALIDITY OF PARTICULAR.

3. That of Miller, assignee of Kirkham, of June 11th, 1861, reissued January 27th, 1863, for door-locks with reversible latches, was not valid; the invention patented having been anticipated by Barthol Erbe. *Coffin* v. *Ogden*, 120.
4. That to Hicks for a wagon-reach was void for want of "invention" in making the thing patented. *Hicks* v. *Kelsey*, 670.

PATENTS (*continued*).

III. ASSIGNMENT OF.

5. Where a person during the original term of a patent bought from one who had no right to sell it, a machine which was an infringement of the patent, and afterwards himself bought the patent for the county where he was using the machine, *held* that on an extension of the patent the owners of the extension could not recover against him for using the machine after the original term had expired; but that such purchase of the interest in the patent, removed, as to the purchaser, all disability growing out of the wrongful construction of the machine then used by him, and rendered the use of it legal. *Eunson* v. *Dodge*, 414.

PAYMENT. See *Tender*.

PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY. See *Taxation*, 1–6.

The different acts of Pennsylvania, Delaware, and Maryland, by which the several roads, incorporated by these three States respectively, and now by consolidation under statutes of the same States made into one road, bearing the title of the Philadelphia, Wilmington and Baltimore Railroad Company, passed upon, so far as relates to certain taxes laid by the State of Delaware on the said road. *The Delaware Railroad Tax*, 206.

PLEADING. See *Official Negligence; Rebellion*, 5; *Territories*.

1. The court refused to pass upon the constitutional question, where on an indictment for selling intoxicating liquors in violation of statute, the defence *intended* to be raised was that the person indicted owned the liquor at the time when the statute was passed, and that in abridging his rights to sell what at that time was his own property the statute was unconstitutional; but where the plea (which was demurred to) did not, in due form and by positive allegation, allege the time *when* the defendant became the owner of the liquor sold. [There were moreover circumstances which satisfied the court that the case was a moot case.] *Bartemeyer* v. *Iowa*, 129.

2. Whenever one justifies an act which in itself constitutes at common law a wrong, upon the process, order, or authority of another, he must set forth substantially and in a traversable form the process, order, or authority relied upon; and no mere averment of its legal effect, without other statement, will answer. *Bean* v. *Beckwith*, 510.

3. This is not changed by the act of March 3d, 1863, relating to *habeas corpus*, &c., nor by that of March 2d, 1867, "to declare valid and conclusive certain proclamations of the President." *Ib.*

POSSESSORY RIGHTS. See *Actual Settler*.

PRACTICE. See *Admiralty*, 1-4; *Equity*, 2; *Judicial Comity; Parties, Territories*.

I. IN THE SUPREME COURT.

(*a*) *In cases generally.*

1. When, on a view of the record, it appears that from some fatal defect in the proceedings, no judgment can be entered against the defendant

PRACTICE (*continued*).

in the court below, on a suit there pending, this court will decline to answer a question certified to it on division of opinion between the judges of the Circuit Court, upon a contrary assumption. *United States* v. *Buzzo*, 125.

2. Though both in civil and criminal cases, the judgments, orders, and decrees of courts are under their control during the term at which they are made, so that they may be set aside or modified as law and justice may require, yet this power of the courts cannot be used to violate the guarantees of personal rights found in the common law, and in the constitutions of the States and of the Union, as, for example, to punish a man twice by judicial judgments for the same offence. *Ex parte Lange*, 163.

3. Where a case is tried by the Circuit Court under the act of March 3d. 1865, if the finding be a general one, this court will only review questions of law arising in the progress of the trial and duly presented by a bill of exceptions, or errors of law apparent on the face of the pleadings. *Insurance Company* v. *Folsom*, 237; *Town of Ohio* v. *Marcy*, 552.

4. The only remedy for surprise is a motion for new trial, and the refusal of a court below to grant one is not reviewable here. *Mulhall* v. *Keenan*, 342.

5. An assignment of error which alleges simply that the court below erred in giving the instructions which were given to the jury in lieu of the instructions asked for—it not being stated in what the error consisted or in what part of the charge it is—is an insufficient assignment under the 21st Rule of court. *Lucas* v. *Brooks*, 436.

(*b*) *In admiralty.*

6. When a vessel libelled for collision means to set up injury to herself and to set off damages therefore against damages claimed for injury which she has herself done, the injury done to her ought to be alleged, either by cross-libel or by answer; and if not somewhere thus set up below, the Supreme Court cannot first award damages. *The Sapphire*, 51.

(*c*) *In chancery.*

7. Where a decree is entered upon an order taking a bill in equity as confessed by defendants for want of an answer, the only question for the consideration of this court on appeal is whether the allegations of the bill are sufficient to support the decree. *Masterton* v. *Howard*, 99.

II. In the Circuit Courts.

8. Evidence which may divert the attention of the jury from the real issue —that is to say, immaterial evidence—should be kept from the jury. *Lucas* v. *Brooks*, 436.

9. The improper exclusion of evidence is not error when the party offering it has proved, in another way, every fact which the evidence, if it had been admitted, would prove. *Ib.*

10. Prayers for instructions which overlook facts of which there is evidence, or which assume as fact that of which there is no evidence, are properly refused. *Ib.*

PRACTICE (*continued*).

11. Under the act of March 3d, 1865, the Circuit Court is not required to make a special finding. *Insurance Company* v. *Folsom*, 237.
12. Where the assignees of a claim on a third party have parted completely with their interest in it and, by a transfer, vested the entire title in others, they are not necessary parties in an equity proceeding by those others to enforce it. *Batesville Institute* v. *Kauffman*, 151.

III. IN THE DISTRICT COURTS.

13. What constitutes an appearance in admiralty. *Atkins* v. *Fibre Disintegrating Company*, 272.

PREFERENCE. See *Bankrupt Act*, 2, 3.

A payment by one insolvent, otherwise void as a preference under sections thirty-five and thirty-nine of the Bankrupt law, is not excepted out of the provisions of those sections because it was made to a holder of his note overdue, on which there was a solvent indorser whose liability was already fixed. *Bartholow* v. *Bean*, 635; and see *Cook* v. *Tullis*, 332.

PRESUMPTIONS. See *Burden of Proof; Legal Presumptions.*

PUBLIC LANDS. See *Actual Settler.*

PUBLIC LAW. See *Rebellion, The*, 1–4.

While the existence of war closes the courts of each belligerent to the citizens of the other, it does not prevent the citizens of one belligerent from taking proceedings for the protection of their own property in their own courts, against the citizens of the other, whenever the latter can be reached by process. *Masterton* v. *Howard*, 99.

PUBLIC OFFICER. See *Official Negligence.*

PUBLIC POLICY. See *Ex turpi causâ non oritur actio; Slave Contracts*, 1.

QUARTERMASTER.

His office distinguished from that of a commissary of subsistence. *Shrewsbury* v. *United States*, 664.

"RAISED" CHECK. See *Bank Check.*

RATIFICATION.

The ratification by one of the unauthorized act of another operates upon the act ratified precisely as though authority to do the act had been previously given, except where the rights of third parties have intervened between the act and the ratification. *Cook* v. *Tullis*, 332.

REASSESSMENT. See *Internal Revenue*, 4, 5, 6.

REBELLION, THE. See *Confiscation Act; Public Law; Tender.*

1. A sale of real estate made under a power contained in a deed of trust executed before the late civil war is valid, notwithstanding the grantors in the deed, which was made to secure the payment of promissory notes, were citizens and residents of one of the States declared to be in insurrection at the time of the sale, made while the war was flagrant. *University* v. *Finch*, 106.
2. This court has never gone further in protecting the property of citizens residing in such insurrectionary States from judicial sale than to de-

REBELLION, THE (*continued*).
clare that where such citizen has been driven from his home by a special military order, and forbidden to return, judicial proceedings against him were void. *University* v. *Finch*, 106.

3. The property of such citizens found in a loyal State is liable to seizure and sale for debts contracted before the outbreak of the war, as in the case of other non-residents. *Ib.*

4. The civil war was flagrant in Arkansas from April, 1861, to April, 1866, and during this time the operation of the statute which limited the duration of liens to three years was suspended. *Batesville Institute* v. *Kauffman*, 151.

5. The act of March 3d, 1863, entitled "An act relating to *habeas corpus*, and regulating judicial proceedings in certain cases," and the act of March 2d, 1867, entitled "An act to declare valid and conclusive certain proclamations of the President, and acts done in pursuance thereof, or of his orders in the suppression of the late rebellion against the United States," do not change the rules of pleading, when the defence is set up in a special plea, or dispense with the exhibition of the order or authority upon which a party relies. Nor do they cover all acts done by officers in the military service of the United States simply because they are acting under the general authority of the President as commander in chief of the armies of the United States. Assuming that they are not liable to any constitutional objection, they only cover acts done under orders or proclamations issued by the President, or by his authority. *Bean* v. *Beckwith*, 510.

"REGULATION OF BUSINESS." See *National Banks*, 2.

REPEAL OF STATUTE. See *Implied Repeal of Statutes.*

REPRESENTATION. See *Insurance*, 2.

REVERSAL OF JUDGMENT. See *California*, 7.

REVIVAL OF DISCHARGED DEBT.
Is not made except by clear, distinct, and unequivocal promise to pay. *Allen & Co.* v. *Ferguson*, 1.

RIPARIAN OWNERS. See *San Francisco, City of.*

SAN FRANCISCO, CITY OF.
Her rights and those of her grantees in, over, and to lands covered by the waters of the bay of San Francisco, granted to her for ninety-nine years by the act of legislature of the State, March 26th, 1851, and the act of May 1st, 1851; and how far grantees of the city acquired a right to build wharves beyond the line designated as the "permanent water-front of the city;" and the rights of the city and State by improvements to demolish any wharves so built. This whole matter considered. *Weber* v. *Harbor Commissioners*, 57.

SET-OFF. See *Bankrupt Act*, 4.
Is enforced in equity only where there are mutual debts or mutual credits, or where there exists some equitable consideration or agreement between the parties which would render it unjust not to allow a set-off. *Gray* v. *Rollo*, 629

SLAVE CONTRACTS.

1. It is no defence to a suit brought on a promissory note executed in Louisiana, in February, 1861, by the holder against the maker, to allege and prove that such note was given as the price of slaves sold to the maker. *Boyce* v. *Tabb*, 546.
2. That such sale was at the time lawful in the said State was a sufficient consideration for a note, and the obligation could not be impaired by laws of the State passed subsequently to the date thereof. *Ib.*
3. No law of the United States has impaired such obligation. *Ib*

SPECIAL FINDING. See *Practice*, 3.

Circuit Courts are not required under the act of March 3d, 1865, to make such finding. *Insurance Co.* v. *Folsom*, 237.

STALE CLAIMS. See *Laches*.

STAMP. See *Internal Revenue*, 1.

STATUTE OF LIMITATIONS. See *California*, 2; *Laches; New York.*

1. The civil war was flagrant in Arkansas from April, 1861, to April, 1866; and during this time the operation of the statute which limited the duration of liens to three years was suspended. *Batesville Institute* v. *Kauffman*, 151.
2. When a trustee has closed his trust relation to the property and to the *cestui que trust*, and parted with all control of the property, the statute of limitations runs in his favor, notwithstanding it is an express trust. *Clarke* v. *Boorman's Executors*, 493.

STATUTES. See *Construction, Rules of*, 1; *Implied Repeal of Statutes.*

STATUTES OF THE UNITED STATES.

The following, among others, referred to, commented on, and explained:

1789.	September 24th.	See *Judicial Comity; Jurisdiction*, 5–8.
1790.	May 26th.	See *Jurisdiction*, 1–3.
1846.	August 6th.	See *Ex turpi causâ non oritur actio.*
1849.	March 3d.	See "*Military Service of the United States.*"
1850.	September 9th.	See *Utah.*
1850.	September 27th.	See *Oregon Donation Act.*
1860.	June 14th.	See *California*, 5.
1862.	June 7th.	See *Tender.*
1862.	July 1st.	See *Constitutional Law*, 1.
1862.	July 17th.	See *Confiscation Act.*
1863.	March 3d.	See *Rebellion*, 5.
1864.	June 3d.	See *National Banks.*
1864.	June 30th.	See *Customs of the United States; Internal Revenue*, 3, 4.
1864.	July 2d.	See *Evidence*, 2.
1865.	March 3d.	See *Practice*, 3, 11.
1866.	July 13th.	See *Internal Revenue.*
1867.	February 22d.	See *District of Columbia*, 1.
1867	March 2d.	See *Bankrupt Act; Internal Revenue*, 6; *Jurisdiction*, 7; *Rebellion*, 5.
1869	April 10th.	See *District of Columbia*, 1.
1878	March 3d.	See *Alabama.*

STATUTORY PENALTY.
The action of debt lies for a. *Chaffee & Co.* v. *United States*, 516.

STOCK IN NATIONAL BANKS.
Not subject to lien for debts of the owner due the bank. *Bullard* v. *Bank*, 589.

SURPRISE. See *Practice*, 4.

TAX. See *Tender*.

TAXATION.
1. Where an exemption of particular property, or parcels of property, or a limitation of the general rate is set up, the intent of the legislature to exempt or to limit must be made clear beyond reasonable doubt. *The Delaware Railroad Tax*, 206; *Trask* v. *Maguire*, 391.
2. Accordingly, a provision in an act allowing one railroad corporation to unite itself with another railroad corporation, and so make a new corporation, that the new corporation should pay annually a quarter of one per cent. upon its capital, was held to be only a designation of the tax payable annually until a different rate should be established, and not a restraint upon the legislature from imposing a further tax. *The Delaware Railroad Tax*, 206.
3. The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. *Ib.*
4. A tax upon a corporation may be proportioned to the income received as well as to the value of the franchise granted or the property possessed. *Ib.*
5. The fact that taxation increases the expenses attendant upon the use or possession of the thing taxed, of itself constitutes no objection to its constitutionality. *Ib.*
6. The exercise of the authority which every State possesses to tax its corporations and all their property, real and personal, and their franchises, and to graduate the tax upon the corporations according to their business or income, or the value of their property, when this is not done by discriminating against rights held in other States, and the tax is not on imports or tonnage, or transportation to other States, cannot be regarded as conflicting with any constitutional power of Congress. *Ib.*
7. How far a State may tax an agency created by the Federal government. The question considered in the case of a State taxing a railroad company chartered by Congress. *Railroad Company* v. *Peniston*, 5.
8. Unorganized territory attached by statute to a particular county in it, for *revenue* purposes, gives power to such county to levy taxes on taxable property in it. *Ib.*
9. Where a legislature exempted the property of a particular corporation from taxation and afterwards bought the property at judicial sale, and so, itself, became owner of the same, the previously granted im-

TAXATION (*continued*).

munity from taxation ceased of necessity. And on a subsequent grant by the State, the immunity from taxation was not renewed; a constitution of the State made between the date of the first grant and the last having ordained that no special laws should be made exempting the property of any person or corporation from taxation. *Trask* v. *Maguire*, 391.

TENDER.

Under the act of June 7th, 1862, "for the collection of the direct tax in insurrectionary districts," &c., a tender by a relative of the owner of the tax due upon property advertised for sale is a sufficient tender. And if the tax commissioners have, by an established general rule announced and a uniform practice under it, refused to receive the taxes due unless tendered by the owner in person, it is enough if a relative of the owner "went to the office of the commissioners to see after the payment of the tax on the property, but made no formal offer to pay because it was in effect waived by the commissioners, they declining to receive any tender unless made by the owner in person." *Tacey* v. *Irwin*, 549.

TERRITORIES. See *Utah*.

The practice, pleadings, and forms and modes of proceeding of the Territorial courts, as well as their respective jurisdictions, were intended by Congress to be left to the legislative action of the Territorial assemblies and to the regulations which might be adopted by the courts themselves. The cases of *Noonan* v. *Lee* (2 Black, 499), *Orchard* v. *Hughes* (1 Wallace, 77), and *Dunphy* v. *Kleinsmith* (11 Id. 610), in which a different view was taken, reconsidered and not approved. *Hornbuckle* v. *Toombs*, 648; *Hershfield* v. *Griffith*, 657; *Davis* v. *Bilsland*, 659.

TESTAMENTARY LETTER. See *Last Will and Testament*, 1.

"TRANSPORT."

A contract made with a quartermaster of the army to transport supplies distinguished from one made with "a commissary of subsistence" to "deliver" them. *Shrewsbury* v. *United States*, 664.

TRUST PROPERTY.

1. Where a depositary of certain government bonds used some of them without the permission of the owner and substituted in their place a bond and mortgage, and the owner of the bonds upon hearing of the transaction ratified it, *Held*, that neither the creditors of the depositary, who had become insolvent when such approval was made, nor his trustee in bankruptcy, could complain of the transaction, there being no pretence that the property substituted was less valuable than that taken, or that the estate of the debtor was less available to his creditors. *Cook* v. *Tullis*, 332.

2. Where property held upon any trust to keep, or use, or invest it in a particular way, is misapplied by the trustee and converted into different property, or is sold and the proceeds are thus invested, the

TRUST PROPERTY (*continued*).

property may be followed wherever it can be traced through its transformations, and will be subject, when found in its new form, to the rights of the original owner or *cestui que trust*. It does not alter the case that the newly acquired property, instead of being purchased with the proceeds of the original property, is obtained by a direct exchange for it. *Cook* v. *Tullis*, 332.

USURY. See *National Banks*, 3.

Although a loan of money may be usurious and the contract to return it void, yet, in the absence of statutory enactment, it does not follow that the borrower, after he has once repaid the money, nor even that his assignee in bankruptcy, whose rights are in some respects greater than his own, can recover the principal and illegal interest paid. Equity, however, in its discretion may enable either to get back whatever money the borrower has paid in excess of lawful interest. *Tiffany* v. *Boatman's Institution*, 375.

UTAH.

Under the organic act of September 9th, 1850, organizing the Territory of Utah, the attorney-general of the Territory, elected by the legislature thereof, and not the district attorney of the United States, appointed by the President, is entitled to prosecute persons accused of offences against the laws of the Territory. *Snow* v. *United States*, 317.

WAIVER OF NOTICE.

The question of waiver of a notice to quit is always in part a question of intent, and there can be no intent to waive notice when the act relied on as a waiver has been the act of the party's agent, unknown to the principal and unauthorized by him. *Lucas* v. *Brooks*, 436.

WAIVER OF TENDER AND PAYMENT. See *Tender*.

WAR, STATE OF. See *Public Law; Rebellion, The*, 1-4.

WAREHOUSE BOND.

The ordinary, is hardly a common pecuniary bond, but is rather a bond given to secure the payment of whatever duties may be by law chargeable on the merchandise to which it refers. If a forfeiture has occurred, the obligors can be relieved from the forfeiture only upon doing complete equity. *Westray* v. *United States*, 322.

WHARVES. See *San Francisco, City of*.

WIFE'S SEPARATE PROPERTY. See *District of Columbia*, 1; *Dower; Husband and Wife; Oregon Donation Act*, 2.

The personal acquisitions of a wife, in Georgia, being by statute of that State not subject to the debts of her husband, her separate earnings from her individual labor and business carried on with his consent, cannot be reached by his assignees in bankruptcy. *Glenn et al.* v. *Johnson et al.* 476.